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**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND DIVISION**

In re:

Case No.: 10-73935

Elizabeth Granados  
Debtor

And In Re:

Brian V. Granados  
Movant

**MEMORANDUM OR POINTS AND  
AUTHORITIES RE: MOTION FOR  
ABANDONMENT OF REAL AND  
PERSONAL PROPERTIES**

**I. FACTS**

**A. Background**

1. Movant Brian V. Granados (“Movant”) is a debtor in a pending Chapter 13 case, Case No. 12-44391. He is the separated spouse of the above captioned Debtor Ms. Elizabeth Granados (hereinafter: “Debtor”). Their dissolution of marriage case is pending with the Superior Court of California, County of Contra Costa since November 2010. In this motion Movant requests that the Court orders the Chapter 7 Trustee to abandon the following three properties;

a) **Property located in 1231 Aloha St., Red Bluff CA 96080 (“Red Bluff Property”)** - since there is no equity in the property and therefore it is burdensome or of inconsequential value to the estate and because there has been a significant and unreasonable delay in the Chapter 7 Trustee’s investigation of the estate.

1 b) **2005 Cadillac Escalade with 105,000 (“Cadillac Vehicle”)** - because there has been a  
2 significant and unreasonable delay in the Chapter 7 Trustee’s investigation of the estate and  
3 since due to its’ condition, said property is burdensome to the estate.

4 c) **1998 Harley Davidson Dyna convertible motorcycle (“HD Motorcycle”)** - because  
5 there has been a significant and unreasonable delay in the Chapter 7 Trustee’s investigation  
6 of the estate and since due to its’ condition said property is burdensome to the estate.

7 2. On December 3, 2010 (almost two years ago) Debtor filed for bankruptcy under Chapter  
8 7 of the Bankruptcy Code on December 3, 2010. The Chapter 7 Trustee, Fred Hjelmset had  
9 been appointed to administer the Debtor’s estate.

10 3. The above captioned case had been dismissed on February 3, 2011 due to the Debtor’s  
11 failure to appear at the meeting of creditors (Order Docket # 20). However, the dismissal had  
12 been vacated and the case reopened on March 11, 2011 (Order Docket # 35). Meetings of  
13 creditors took place on 3/25/11, 4/22/11 and 5/9/11. Notice of possible dividends had been filed  
14 by the Trustee on May 2, 2011 (Docket # 40).

15 4. The Law Office of Stromsheim & Associates had been appointed as counsel for the  
16 Chapter 7 Trustee on July 29, 2011 (docket # 56), more than 15 months ago.

17 5. On August 22, 2011 the counsel for the Chapter 7 Trustee sent Movant a letter,  
18 requesting documents and information. Debtor did not provide any documents to the Trustee  
19 since no such documents were in his possession. However, he allowed an appraiser on behalf of  
20 the Trustee to examine the Cadillac Vehicle and HD Motorcycle.

## 21 22 **B. Red Bluff Property**

23 6. The Red Bluff property is being owned 50% by Movant’s brother Anthony Granados and  
24 the other 50% by a family trust for the benefit of Movant and Debtor. Movant’s 77 years old  
25 mother, Ms. Carol Granados, lives in the Red Bluff Property. This had been her home for many  
26 years. Before she transferred her interests in the Red Bluff Property to Movant and his brother  
27 they promised her that she can live in the Red Bluff Property for the rest of her life.

1 7. In March 2012 Movant's mother received a demand from the Chapter 7 Trustee,  
2 requesting that she pays rent to the Trustee. The demand had been declined with the explanation  
3 that Movant's brother is an owner as well and he and Movant's mother make all mortgage  
4 payment against the property..

5 8. There is no equity in the Red Bluff Property since the payoff on the mortgage against the  
6 property is \$73,367.76 as of September 16, 2012 and the value of the property is estimated to be  
7 \$62,000. Movant's mother and brother are making all mortgage payments and other expenses  
8 associated with the Red Bluff Property. The Chapter 7 Trustee does not make any payments  
9 toward this property.

#### 10 11 **Cadillac Vehicle**

12 9. The Cadillac Vehicle does not run. It needs new transmission and other repairs. The cost  
13 of the repairs is estimated to be about \$4,691.48. In addition to these repairs, the Cadillac  
14 Vehicle needs body work. The Cost of the body work is estimated to be around \$4,000 -  
15 \$5,000.00.

16 10. In March 2012 the Trustee requested that Movant purchase the 2005 Escalade from the  
17 Debtor' estate for the amount of \$15,000.00, which reflect the Kelly Blue Book retail price of the  
18 vehicle. Movant declined.

19 11. Since the Chapter 7 Trustee claims interests in the Cadillac Vehicle, Movant did not want  
20 to invest money in repairing the vehicle, fearing that the Chapter 7 Trustee will take the vehicle  
21 from me immediately after the repairs and the money will get lost. In addition, Movant did not  
22 renew the vehicle's license and received collection notices. Again, Movant did not want to pay  
23 for the vehicle's license, just to have the vehicle taken immediately after by the Trustee.

24 12. Movant stated that he find his situation to be impossible. On one hand he cannot fix his  
25 vehicle and on the other hand he does not know if he needs to invest in purchasing an alternative  
26 vehicle.

#### 27 28 **C. Harley Davidson Motorcycle**

1 13. The HD Motorcycle does not run. It has severe oil leaks. It underwent an accident. As  
2 result, the front forks were damaged and need to be replaced or repaired, the clutch paddle needs  
3 to be replaced or repaired and the motorcycle lights are broken. Movant will need to invest at  
4 least \$2,000.00 in order to have the motorcycle repaired.

5 14. In March 2012 the Trustee requested that Movant purchase the HD Motorcycle from the  
6 Debtor' estate for the amount of \$10,000.00. Movant declined. Movant stated in his declaration  
7 that he does not want to invest money and have the motorcycle repaired, just to have the Trustee  
8 later taking the motorcycle.

## 9 10 **II. LEGAL ARGUMENT**

### 11 **A. Burdens and Benefits to the Estate**

12 1. Under 11 U.S.C. § 554(b), the Court may, on request of a party in interest and  
13 after notice and a hearing, order the trustee to abandon any property of the bankruptcy estate that  
14 is burdensome or of inconsequential value and benefit to the estate. The party seeking  
15 abandonment bears the burden of proving the property is either burdensome or of  
16 inconsequential benefit and value. The party opposing abandonment must demonstrate the likely  
17 benefit to the estate of retaining the property. See *In re Alexander*, 289 B.R. 711, 715 (B.A.P. 8th  
18 Cir. 2003). The bankruptcy court has the discretion to determine whether the factual predicates  
19 for abandonment are present. *In re Nelson*, 251 B.R. 857, 859 (B.A.P. 8th Cir. 2000).

20 Bankruptcy courts have found that abandonment is appropriate in circumstances where there is  
21 no concrete evidence of value to the bankruptcy estate. See, e.g., *id.* at 861 (affirming the order  
22 compelling abandonment where trustee presents only a speculative scenario giving rise to value  
23 for the bankruptcy estate from two parcels of over-encumbered real property). The party  
24 opposing abandonment must demonstrate the likely benefit to the estate of retaining the property.  
25 Speculation and conjecture are not sufficient to make that showing. *Nelson*, 251 B.R. at 860.

26 2. There is no question the interests of the estate in the Red Bluff (50% rights in a  
27 property with negative equity of \$11,000.00) is of inconsequential benefit and value to the estate.  
28

1           3.       In addition the Chapter 7 Trustee does not contribute to the expenses (mortgage,  
2 real estate taxes and insurance) and maintenance costs associated with the Red Bluff Property.  
3 This trustee cannot simply take a free ride of Movant's mother and brother on preserving the Red  
4 Bluff and then few years later down the road, if and when the property would show some equity,  
5 due to possible change in the real estate market and continued mortgage payments, claim the  
6 equity to the estate.

7           4.       It seems that it is also burdensome to the estate to keep broken vehicles or to  
8 invest thousands of dollars in their repairs.

9  
10 **B.     Unreasonable Delay**

11           5.       It is more than 21 month since the above captioned bankruptcy case had been  
12 filed and more than 15 months passed since the Trustee's counsel had been appointed.

13           6.       In a Chapter 7 bankruptcy case, the trustee's major responsibility is to "collect  
14 and reduce to money the property of the estate . . . and close such estate **as expeditiously as is**  
15 **compatible with the best interests of the parties.**" 11 U.S.C. § 704(a)(1) (emphasis added).  
16 "The duty to close the estate expeditiously is the Trustee's main duty and overriding  
17 responsibility." *Yadkin Valley Bank & Trust v. Linda McGee, Trustee (In re Hutchinson)*, 5 F.3d  
18 750, 753 (4th Cir. 1993) (citing *Collier on Bankruptcy* and other cases). "In order to close an  
19 estate expeditiously, a bankruptcy trustee must expeditiously perform each task necessary to  
20 close the estate, including the liquidation of the estate." *Id.* at 753-54. "The duty to close the  
21 estate expeditiously will often conflict with other duties . . . but this conflict is explicitly  
22 recognized in the text of the statute itself, which requires the bankruptcy trustee to **balance the**  
23 **need for expeditious conduct against the 'best interest of parties in interest.'**" *Id.* at 754  
24 (quoting 11 U.S.C. § 704(1)) (emphasis added).

25           In balancing these duties, the trustee is generally permitted, within a reasonable time, to  
26 consider the question of abandonment. 5 *Collier on Bankruptcy* ¶ 554.02(2) (Alan N. Resnick &  
27 Henry J. Sommer eds., 16th ed.). *Collier* describes the proper balancing as follows:

1       **“The term “reasonable” implies that the period of deliberation is adaptable to the**  
2       **circumstances. The trustee may wait until he or she is able to ascertain whether**  
3       **there is any profit to be expected for the estate. In fact, it may be the trustee’s duty**  
4       **to wait.**

5       ...

6       **While the trustee may be accorded a reasonable time period for investigation, when**  
7       **other parties seek a decision about abandonment, there comes a time, as one court**  
8       **put it, “to fish or cut bait.” The trustee must close a bankruptcy estate as**  
9       **expeditiously as is compatible with the best interests of the parties. The term**  
10       **expeditiously should be deemed to put a reasonable time limitation on the trustee.**  
11       **Extraordinary delay in closing a bankruptcy estate should generally not be**  
12       **tolerated. Unreasonably holding property that should be abandoned should**  
13       **likewise not be tolerated.”**

14       7.       Here, there has been significant unreasonable delay with regard to all three  
15       properties included in this motion.

16       8.       In addition, the situation seems highly unfair toward Movant. Under the  
17       circumstances Movant does not know if he need to invest thousands of dollars and fix his  
18       vehicles, or on the other hand should he simply save and buy another vehicle. At all this time  
19       Movant is suppose to store the broken vehicles on his own expense.

20       9.       There is no question that the Trustee could have move faster in her investigation  
21       and liquidate or abandon the properties long time ago. It is time “to cut bait”, abandon the  
22       properties listed in this motion.

### 23       **III.**

### 24       **CONCLUSION**

25       WHEREFORE, the Movant requests that this Court enter an Order directing the trustee  
26       to abandon the Debtor’s estate's interest in the Red Bluff Property, the Cadillac Vehicle and the  
27       HD Motorcycle.

28       DATED this 2 Day of November 2012

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/s/ Geva Baumer  
Geva Baumer  
Attorney for Movant